



MEETING DATE: 8/21/06  
ITEM NO:

13

## COUNCIL AGENDA REPORT

DATE: August 15, 2006  
TO: MAYOR AND TOWN COUNCIL  
FROM: DEBRA J. FIGONE, TOWN MANAGER

SUBJECT: CONSIDER AN APPEAL OF A PLANNING COMMISSION DECISION REGARDING MODIFICATIONS OR REVOCATION OF CONDITIONAL USE PERMIT U-94-44 (GOGUEN'S LAST CALL) FOR THE OPERATION OF A BAR ON PROPERTY ZONED C-2. APN: 529-07-046. PROPERTY LOCATION: 408 N. SANTA CRUZ AVENUE. PROPERTY OWNER: LOS GATOS SHOPPING CENTER, LLC. APPELLANT: CYNTHIA GOGUEN.

### RECOMMENDATION:

1. Open and hold the public hearing.
2. Close the public hearing.
3. Uphold the Planning Commission's decision to modify Conditional Use Permit U-94-44 for Goguen's Last Call (requires motion).
4. Refer to the Town Attorney for the preparation of the appropriate resolution.

If the Town Council determines that the Planning Commission's decision should be reversed or modified:

1. The Council needs to find one or more of the following:
  - (1) where there was error or abuse of discretion on the part of the Planning Commission; or
  - (2) the new information that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or
  - (3) an issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.

PREPARED BY:

BUD N. LORTZ

DIRECTOR OF COMMUNITY DEVELOPMENT

Reviewed by: PSJ Assistant Town Manager OK Town Attorney  
\_\_\_\_ Clerk Administrator \_\_\_\_ Finance ☒ Community Development

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2. If the predominant reason for modifying or reversing the decision of the Planning Commission is new information as defined in Subsection (2) above, it is the Town's policy that the application be returned to the Commission for review in light of the new information unless the new information has a minimal effect on the application.
3. Refer to the Town Attorney for preparation of the appropriate resolution.

In this hearing, Council may take into consideration the Planning Commission's decision to modify the Conditional Use Permit (CUP) for Goguen's Last Call as well as staff's original recommendation to revoke the CUP. Based on its review of the evidence, Council may uphold the Commission decision, modify the Conditions of Approval, or revoke the CUP.

**BACKGROUND:**

At the meeting of May 10, 2006, the Director of Community Development requested that the Planning Commission schedule a public hearing to consider the revocation of the Conditional Use Permit for Goguen's Last Call (Last Call), a bar located at 408 N. Santa Cruz Avenue. The Commission agreed to schedule a public hearing on June 14, 2006.

Section 29.20.315 of the Town Code states that the Planning Commission may revoke or modify a zoning approval if it finds one of the following grounds exist:

- (1) That the zoning approval was obtained by fraud;
- (2) That any person making use of, or relying upon the zoning approval is violating or has violated any conditions of such zoning approval or of Section 29.10.095, or the use for which the zoning approval was granted is being, or has been, exercised contrary to the terms or conditions of such approval; or
- (3) That the use for which the approval was granted is so exercised as to be detrimental to the public health or safety, or to be a nuisance.

The Director of Community Development identified five key issues relating to Last Call, as follows:

1. The bar has repeatedly permitted the sale of illegal controlled substances (drugs).
2. The bar has repeatedly sold or stocked for sale contaminated alcoholic beverages.
3. The operation of the bar has led to an inordinate and outrageous number of calls for service.

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4. The bar has been operated as a disorderly house and has had its license to sell alcoholic beverages revoked or suspended by the Dept. of Alcoholic Beverage Control, with a 30-day suspension served in January/February of this year.
5. The bar, by its operation, has attracted a substantial number of transients who have loitered behind the premises in an area adjacent to the public parking lot, creating an aura of a threat to personal safety, creating unsightly blight and litter, resulting in public urination and public exposure, and creating conditions requiring cleanup by Town crews at public expense.

Each of these issues will be discussed in more detail in the following section.

KEY ISSUES:

Staff has received two memoranda from the Police Department summarizing the public health and safety issues relating to Last Call (Attachments 1.a and 2.f). The memoranda provide information on the following:

1. Calls for police services, including total calls, serious calls for service, and late night calls for service.
2. Undercover investigation of narcotic sales at Last Call by the California Department of Alcohol Beverage Control (ABC) resulting in a suspension of the bar's alcohol license. Attached to the memorandum is the Certificate of Decision by the ABC which provides details on the undercover investigation and their findings.
3. Summary of inspection reports from the Santa Clara County Environmental Health Department which found contaminated bottles of alcohol, bottles with low alcohol proof levels, and violations of food protection, water and waste requirements. Also, attached are the reports from the Health Department providing details on the findings of their inspections.

Each of the five key issues relating to Last Call is briefly discussed below. This is a summary of the most significant issues associated with Last Call. Staff provided additional discussion of these issues in the previous Commission staff reports.

1. The bar has repeatedly permitted the sale of illegal controlled substances (drugs).

The ABC undertook an undercover investigation of narcotic sales at Last Call. The investigation documented five instances of narcotics sales to undercover investigators over a period of roughly one year. One sale was from an employee of Last Call. Cynthia Goguen, the business owner, stipulated to the narcotic sales in the ABC's Decision (see attachments to Attachment 1.a).

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Kent Washburn, attorney for Cynthia Goguen, states that the business has been operated in a drug-free manner for the past two years and she has implemented measures to discourage drug use and sales at the bar (Attachment 1.c). To the Town's knowledge, no undercover investigations have occurred at Last Call over the past two years.

2. The bar has repeatedly sold or stocked for sale contaminated alcoholic beverages.

Over the past four years, the County Environmental Health Department inspections have revealed five instances in which Last Call was serving contaminated bottles of alcohol. The County discovered a total of 16 bottles were contaminated. In addition to the County inspections, Cynthia Goguen has stipulated to the fact that Last Call possessed 14 bottles of contaminated alcohol on July 15, 2004. The term contamination includes insects, hair, and other foreign particles.

Mr. Washburn states that there have been "a few incidental and minor violations" in selling contaminated alcohol. Staff has reviewed the inspection reports of the County Environmental Health Department and believes five violations over the past four years in addition to the ABC's discovery of 14 bottles of contaminated alcohol demonstrates a repeated and ongoing pattern of unsanitary practices.

3. The operation of the bar has led to an inordinate and outrageous number of calls for Police services.

The Police Department reports that there have been 1218 calls for service to Last Call since November 1999. More important, there have been 189 calls for police service of a serious nature during that same time period. Serious calls typically involve a response by at least two officers. Examples of serious calls are assault with a deadly weapon, active fights, robbery, public drunkenness, narcotic sales, and domestic violence.

The Police Department also reviewed calls for service at Last Call to determine if there is a concentration of serious calls during the late evening hours (Attachment 2.f). The data indicates that a significant proportion of calls for Battery, Assault with a Deadly Weapon, Active Disturbances, and Active Fights occurred after 10:45 P.M., as follows:

- Battery: 47% after 12:00 midnight
- Assault with a Deadly Weapon: 100% after 10:45 P.M.
- Active Disturbances: 67% after 11:00 P.M.
- Active Fight: 93% after 11:45 P.M.

The Police Chief testified that incidents of this type require a response by an average of three officers. Considering evening staffing levels and demands for service during late evening hours, response to serious calls for service at Last Call requires a significant commitment of the Department's officers. In addition, every incident requires police

resources to prepare reports, transport arrestees to jail, and conduct follow-up investigations to close the case.

4. The bar, by its operation, has attracted a substantial number of transients who have loitered behind the premises in an area adjacent to the public parking lot, creating an aura of a threat to personal safety, creating unsightly blight and litter, resulting in public urination and public exposure, and creating conditions requiring cleanup by Town crews at public expense.

The issue of transients was discussed at both Commission hearings. The Town and Mr. Washburn disagree on whether a linkage exists between Last Call and the transients behind the bar. The Police Chief concludes that there is a connection between Last Call and the number of transients behind the bar, but the degree of linkage is unclear.

5. The bar has been operated as a disorderly house and has had its license to sell alcoholic beverages suspended by the Department of Alcoholic Beverage Control, with a 30-day suspension served in January/February of this year.

Based upon the ABC's investigation of narcotic sales, an Administrative Law Judge revoked Last Call's alcohol license, but stayed the revocation for three years with the condition that no further violations occur during the three year probationary period and imposed a 30 day suspension. The 30 day suspension began on January 29, 2006.

#### DISCUSSION:

##### Commission Hearings:

The Commission held the first public hearing on June 14, 2006. The staff report is included as Attachment 1. In the report, staff concluded that ample evidence exists to revoke the Conditional Use Permit as allowed under the Town Code. At the hearing, the Commission heard testimony from the Town staff (Community Development and Police) and Kent Washburn, the attorney for the business owner. The Commission also heard numerous speakers in support of the bar as well as testimony from several citizens that identified issues such as disturbances, loitering, and littering.

The Commission continued the public hearing to the meeting of June 28, 2006. The Commission did not make a decision on the issue of revocation and asked staff to develop revised conditions of approval to address the problems identified with Last Call consideration.

At the meeting of June 28, staff again recommended and continues to recommend revocation of Last Call's CUP based upon the evidence presented (Attachment 2). As requested by the Commission, staff also developed Draft Conditions of Approval based on the issues identified by staff and the neighbors. The conditions were developed with the intent of minimizing impacts on the community.

In summary, the Draft Conditions address the following areas:

1. Hours of Operation:

The existing CUP for Last Call permits hours of operation of 6:00 A.M. to 2:00 A.M., seven days a week. The Town's Alcohol Policy (Attachment 2.e) now establishes earlier closing times for alcohol service of 11:00 P.M. on Sunday through Thursday and 1:00 A.M. on Friday and Saturday. The Policy states that an existing establishment in good standing may continue to operate under previously existing hours of operation. Based upon the evidence presented, staff and the Commission concluded this bar is not in good standing and the hours of operation should be modified.

Staff's Draft Conditions were intended to address existing issues with the bar operation and to minimize impacts to the community while granting the business owner an opportunity to continue operating. The Draft Conditions reduce the hours of operation to 11:00 P.M. on Sunday through Thursday and 12:00 midnight on Friday and Saturday. This is an attempt to reduce disturbances to the neighbors during late night hours.

2. Condition of Rear Area:

Staff developed several conditions to improve maintenance of the area in back of the bar and to discourage loitering (see Conditions 8, 10, and 11).

3. Bar Operations:

The conditions require the business owner to submit a security plan to the Chief of Police and to meet with the Police Department monthly. It is anticipated that the plan will include, but is not limited to, hiring a respected security company with on-site, uniformed security guards during specified hours. The conditions also establish performance standards for bar managers (see Conditions 6, 9, 12, and 13).

4. Agreement with Town:

Condition 14 requires the business owner to enter into a "Last Chance Agreement" with the Town establishing that any proven violation over the next three years will result in immediate revocation of the CUP. Conditions further require the applicant to partially reimburse the Town for current and future costs incurred in abating the nuisance and monitoring compliance with the conditions (see Conditions 14 and 15). Staff anticipates that significant resources will be required to implement and monitor the conditions of approval if the CUP is not revoked.

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5. Neighborhood Meetings:

The business owner is required to hold two neighborhood meetings per year to address impacts on the surrounding community.

Commission Decision:

At the June 28 hearing, the Planning Commission determined that that Last Call is detrimental to the public health and safety and is a nuisance but declined to revoke the CUP, opting instead to modify the CUP by adopting new conditions of approval. The Town Attorney prepared a Resolution to finalize the Commission's decision which the Commission adopted on July 12 (Attachment 6). The adopted Conditions of Approval are attached to the Resolution (Exhibit A.)

The Planning Commission modified three of the Draft Conditions of Approval, as follows:

1. The Commission modified Condition 10 to require Last Call to implement a one-time clean-up of the Northside Parking Lot. The Condition originally required the bar to maintain the area in back of the bar in a condition clear of litter and debris on an ongoing basis.
2. The Commission modified Conditions 16 and 17. Staff proposed that Last Call reimburse the Town for all staff and attorney costs incurred in abatement of the nuisance and monitoring ongoing compliance with the conditions of approval. The Commission capped the annual reimbursement cost at the cost of a CUP application (roughly \$3600).

Applicant's Statements at Hearing:

Mr. Washburn, the appellant's attorney, raised three major points at the second Commission hearing. First, he stated that revocation was premature since the Police Department did not meet with Ms. Goguen to address the police problems at the bar, contrary to its treatment of Mountain Charley's and the Boulevard Tavern. Further, the Town did not warn the appellant that the problems at the bar could jeopardize its CUP.

Staff believes the bar's problems are self-evident and their responsibility to mitigate; Ms. Goguen acknowledged criminal activity at the bar in the ABC decision resulting in the 30-day suspension of her alcohol license. In addition, Last Call specifically initiated a number of the calls to the Police Department. At the hearing, staff clarified that discussions with Los Gatos Bar and Grill and Mountain Charley's were initiated when the bar owner applied for a CUP modification. The discussions with the Boulevard Tavern developed from an unplanned conversation between the bar owner and a police officer. The owner of the Boulevard Tavern was concerned about the operation and clientele of his establishment and was very receptive to the advice of the officer. In the case of Last Call, the bar owner has been extremely

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uncooperative when police have been in the bar and in one instance asked a police officer to leave the bar.

Second, Mr. Washburn stated that the Police Department had not given him copies of the full police reports on each of the calls for service. Staff provided Mr. Washburn with advance copies of the same police data that was provided to the Planning Commission on May 26, 2006. The Police Department has compiled copies of the full police reports on each of the 80 most serious calls for service. Copies of these reports have been placed in a public file in the Community Development Department should the Council or member of the public wish to review them. Staff made copies of the same reports available to Mr. Washburn on August 3, 2006. Further, staff informed Mr. Washburn that the remaining 109 reports of serious police calls or even all 1218 reports on calls for service would be made available for his review.

Third, Mr. Washburn requested that the Commission continue the public hearing for 90 days to allow his client to demonstrate that revocation is not necessary and to further demonstrate that there is no need to reduce the bar's hours of operation. Staff opposed Last Call's request for a three month continuance. Staff recommended that the Commission weigh all of the evidence presented and determine if the grounds for revocation are met. Staff further recommended that if the Commission decided not to revoke the CUP that the Commission should adopt the Draft Conditions to the CUP to ensure that the bar's impacts to the community will be minimized for as long as the bar is in operation.

#### Applicability of Alcohol Policy:

At the June 28, 2006 Commission hearing, Commissioners and Mr. Washburn questioned the applicability of Section II.6 of the Town Alcohol Policy to this proceeding. This section requires the Town to make special findings in approving a CUP to allow alcohol sales past 10:00 P.M. The findings are as follows:

- a. Late night service will not adversely impact adjacent residential neighborhoods.
- b. The applicant does not have a history of complaints and non-compliance with local ordinances or the Alcoholic Beverage Policy.
- c. The applicant has demonstrated a clear benefit to the community.

Commissioners stated that, if applicable, they could not make these findings and they would be forced to close the bar at 10:00 P.M. Some Commissioners were concerned that Section II.6 of the Alcohol Policy put them in a "straitjacket" and did not allow them flexibility in considering hours of operation past 10:00 P.M. After review, the Town Attorney interpreted that the special findings were not applicable to this situation given this is a revocation proceeding and technically not a CUP application. During the hearing, the Town Attorney stated that the Town Council is free to make a different interpretation of the Policy and determine how it should be applied if this matter was appealed to the Council.



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Appeal of Planning Commission Decision:

Ms. Goguen appealed the Commission's decision on July 24, 2006 (see Attachment 5). In summary, the reasons for appeal are as follows:

- The Commission erred because it misinterpreted evidence, believed falsified evidence, and misinterpreted the law.
- The Police Department did not provide access to police reports.
- The Town has no jurisdiction over contamination of alcohol.

Mr. Washburn has stated that Ms. Goguen is not available for this meeting. He has criticized the Town for failing to inform him and his client of the date of the Council hearing until August 10, 2006. In fact, the Town Clerk mailed confirmation of the hearing date to Ms. Goguen on July 26, 2006 via Certified Mail and the return receipt confirms delivery (see Attachment 5).

CONCLUSION:

In order to revoke the Conditional Use Permit for Last Call, the Council must find that the use is detrimental to the public health or safety, or is a nuisance. Staff finds the totality of evidence, including narcotic sales, disproportionate impacts to police services, and the ongoing pattern of unsanitary business practices, clearly establishes that this use meets the required grounds for revocation of the CUP.

The Planning Commission concluded that the use is detrimental to the public health and safety, and is a nuisance as required by Section 29.20.315 of the Town Code and elected to modify the existing Conditional Use Permit. As requested by the Commission, staff developed a set of stringent conditions of approval that are designed to minimize impacts to the public health and safety, abate the current nuisance issues, and provide for immediate revocation should future violations occur.

ENVIRONMENTAL ASSESSMENT:

Is a project as defined under CEQA but is Categorical Exempt under Section 15301 of the CEQA guidelines.

FISCAL IMPACT:

Unless the CUP is revoked, the Town will have to absorb current and future costs to abate the nuisance and ensure compliance with the Conditions of Approval. Significant staff time will be involved in implementing and ensuring compliance with the conditions. The bar owner is required to reimburse the Town for costs up to roughly \$3600 annually but this will not fully compensate the Town nor will it address the fact that staff resources will have to be shifted from other important tasks in serving the community.

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Attachments:

Previously Submitted:

1. Planning Commission Report dated June 8, 2006 which includes:
  - a. Memorandum from Scott R. Seaman, Chief of Police, dated May 31, 2006 plus attachments
  - b. Memorandum from Roy Alba, Code Enforcement Officer, dated May 30, 2006 plus attachment
  - c. Business Owner's Statement prepared by Kent G. Washburn, dated June 2, 2006.
  - d. Letter to Cynthia Goguen dated April 28, 2006
  - e. Planning Commission Report dated May, 4, 2006
  - f. Planning Commission Desk Item dated May, 10, 2006
  - g. Letters from Los Gatos Shopping Center, LLC dated April 28, 2005 and February 28, 2006
  - h. Conditional Use Permit U-94-44
  - i. Planning Commission Desk Item dated June 14, 2006
2. Planning Commission Report dated June 23, 2006 which includes:
  - a. Required Findings for Modification of CUP
  - b. Draft Conditions of Approval
  - c. Letter from Kent G. Washburn dated June 19, 2006
  - d. Planning Commission Report dated June 8, 2006
  - e. Town Alcohol Policy
  - f. Planning Commission Desk Item dated June 28, 2006
3. Verbatim Transcript of Planning Commission meeting of June 14, 2006
4. Verbatim Transcript of Planning Commission meeting of June 28, 2006

Attached:

5. Appeal of Planning Commission Decision Form filed July 24, 2006 and Proof of Service (Certified Mail and Return Receipt Requested forms) dated July 26, 2006.
6. Resolution 2006-1
7. Email from Norman Matteoni dated August 8, 2006 (1 page)
8. Letter from Norman Matteoni received August 10, 2006 (2 pages)
9. Fax from Norm Matteoni received August 15, 2006 (3 pages)
10. Fax from Kent G. Washburn received August 16, 2006 (3 pages)
11. Fax from Kent G. Washburn received August 17, 2006 (1 page)

Distribution:

Cynthia Goguen, 408 N. Santa Cruz Ave., Los Gatos, CA 95030

Jim Zanardi, 16401 S. Kennedy Rd, Los Gatos, CA 95030

Kent Washburn, 123 Jewell Street, Santa Cruz, CA 95060

William Conners, P.O. Box 1521, Pebble Beach, CA 93953

Norman Matteoni, Matteoni, O'Laughlin & Hechtman, 848 The Alameda, San Jose, CA 95126

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**ATTACHMENTS 1 AND 2 and 3 and 4**  
**PREVIOUSLY SUBMITTED**

**Copies are available in the  
Clerk Department for review**

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# TOWN OF LOS GATOS CLERK DEPARTMENT

## PROOF OF SERVICE

(by Mail)

CERTIFIED MAIL 7002 0460 0001 3983 0603  
RETURN RECEIPT REQUESTED

I, Jackie D. Rose, declare:


1. I am over the age of 18 years, not a party to this action, and am employed in the County of Santa Clara at 110 E. Main Street, Los Gatos, California, 95030.

2. I am readily familiar with the Town of Los Gatos' practice for collection and processing of correspondence for mailing with the United States Postal Service and that correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

3. On July 26, 2006 I mailed at Los Gatos, California a true copy of **CONFIRMATION OF PUBLIC HEARING** relating to property know as 408 N. Santa Cruz Avenue, Los Gatos, California to the following:

a. Cynthia L. Goguen, 408 N. Santa Cruz Avenue, los Gatos, CA 95030

4. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 26, 2006.

  
Jackie D. Rose, CMC  
Deputy Clerk  
Town of Los Gatos  
110 East Main Street  
Los Gatos, CA 95030

cc: DIRECTOR OF COMMUNITY DEVELOPMENT

c:\proof-public-hearing

**FILING FEES**  
**\$277.00 Residential**  
**\$1,111.00 per Commercial, Multi-**  
**family or Tentative Map Appeal**

Town of Los Gatos  
 Office of the Town Clerk  
 110 E. Main St., Los Gatos CA 95030

TOWN OF LOS GATOS  
 CLERK DEPARTMENT

# APPEAL OF PLANNING COMMISSION DECISION

I, the undersigned, do hereby appeal a decision of the Planning Commission as follows: (PLEASE TYPE OR PRINT NEATLY)

DATE OF PLANNING COMMISSION DECISION: July 12, 2006

PROJECT / APPLICATION NO: U-94-44

ADDRESS LOCATION: 408 N. Santa Cruz Ave.

CK# 3192 \$1,111.00

CK# 3193 \$500.00  
 (deposit)

Pursuant to the Town Code, the Town Council may only grant an appeal of a Planning Commission decision in most matters if the Council finds that one of three (3) reasons exist for granting the appeal by a vote of at least three (3) Council members. Therefore, please specify how one of those reasons exist in the appeal:

- The Planning Commission erred or abused its discretion because a. it misinterpreted evidence, b. made findings not supported by evidence, c. misinterpreted the law & disregarded exculpatory evidence, e. misinterpreted existing use permit, f. believed falsified "evidence"; OR
- There is new information that was not reasonably available at the time of the Planning Commission decision, which is the contents of Town of Los Gatos police reports which have been demanded (and hereby are demanded again). The police testified to contents of reports but refused appellant access to them (exculpatory evidence) (please attach the new information if possible); OR
- The Planning Commission did not have discretion to modify or address the following policy or issue that is vested in the Town Council: exceeded jurisdiction re contaminants - not within Town's jurisdiction

IF MORE SPACE IS NEEDED, PLEASE ATTACH ADDITIONAL SHEETS.

## IMPORTANT:

- Appellant is responsible for fees for transcription of minutes. A \$500.00 deposit is required at the time of filing.
- Appeal must be filed within ten (10) calendar days of Planning Commission Decision accompanied by the required filing fee. Deadline is 5:00 p.m. on the 10<sup>th</sup> day following the decision. If the 10<sup>th</sup> day is a Saturday, Sunday, or Town holiday, then it may be filed on the workday immediately following the 10<sup>th</sup> day, usually a Monday.
- The Town Clerk will set the hearing within 56 days of the date of the Planning Commission Decision (Town Ordinance No. 1967)
- An appeal regarding a Change of Zone application or a subdivision map only must be filed within the time limit specified in the Zoning or Subdivision Code, as applicable, which is different from other appeals.
- Once filed, the appeal will be heard by the Town Council.
- If the reason for granting an appeal is the receipt of new information, the application will usually be returned to the Planning Commission for reconsideration.

PRINT NAME: Cynthia Goguen  
 DATE: 7/24/06  
 PHONE: (408) 354-5438

SIGNATURE: Cynthia L. Goguen  
 ADDRESS: 408 N. Santa Cruz Ave.  
Los Gatos, Ca. 95030

\*\*\* OFFICIAL USE ONLY \*\*\*

DATE OF PUBLIC HEARING: 8.21.06

Pending Planning Department Confirmation

DATE TO SEND PUBLICATION: 8.2.06

NADEV\FORMS\Planning\Planning Commission Appeal.wpd

CONFIRMATION LETTER SENT: Date: 7.26.06

TO APPLICANT & APPELLANT BY:

DATE OF PUBLICATION: 8.9.06

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
**CYNTHIA L. GROGUEN**  
**408 N. SANTA CRUZ AVENUE**  
**LOS GATOS, CA 95030**

2. Article  
 (Title)

PS Form

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature ☒ Agent ☐ Addressee  
*Cynthia L. Groguen*

B. Received by (Printed Name) C. Date of Delivery  
*CYNTHIA L. GROGUEN 7-31*

D. Is delivery address different from item 1? ☐ Yes ☒ No  
 If YES, enter delivery address below:

3. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes ☒ No

102595-02-M-1540

**U.S. Postal Service**  
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| Restricted Delivery Fee<br>(Endorsement Required) |    |
| Total Postage & Fees                              | \$ |

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Sent To  
**CYNTHIA L. GROGUEN**  
 Street, Apt. No.,  
 or PO Box No. **408 N. SANTA CRUZ AVENUE**  
 City, State, ZIP+4 **Los Gatos, Ca 95030**

PS Form 3800, January 2001

See Reverse for Instructions

7002 0460 0001 3983 0603

## **RESOLUTION 2006 - 01**

**RESOLUTION OF THE PLANNING COMMISSION OF THE TOWN OF LOS GATOS DETERMINING THAT THE OPERATIONS OF THE LAST CALL BAR IS DETRIMENTAL TO THE PUBLIC HEALTH AND SAFETY AND CONSTITUTES A NUISANCE AND AMENDING THE CONDITIONS OF APPROVAL PURSUANT TO LOS GATOS TOWN CODE SECTION 29.20.315**

APN: 529-07-046  
CONDITIONAL USE PERMIT: U-94-44  
PROPERTY LOCATION: 408 N. Santa Cruz Ave.

### **WHEREAS:**

1. This matter came before the Planning Commission for public hearing on June 14, 2006, at the direction of the Commission given on May 10, 2006, in response to a request by the Director of Community Development made pursuant to Town Code section 29.20.310. The public hearing was continued to June 28, 2006.
2. The Commission received testimony and documentary evidence from Town staff, the owner and representatives of Goguen's Last Call (the "Bar"), and all interested persons who wished to testify or submit documents. The Commission considered all testimony and materials submitted.
3. The Bar is located at 408 N. Santa Cruz Ave. It was granted a Conditional Use Permit ("CUP") on or about February 1994, which allowed for the sale of alcohol for on-site consumption without food service.
4. The approved hours of operation for the Last Call Bar are as 6:00AM to 2:00AM seven (7) days per week.
5. Los Gatos Town Code section 29.20.315 provides that, after a hearing held pursuant to Town Code section 29.20.310, the Planning Commission may revoke or

modify a zoning approval if it finds that zoning approval was obtained by fraud, or if it finds violations of conditions of approval, or if the use is exercised in a manner that is detrimental to the public health or safety, or constitutes a nuisance.

6. Town staff recommends that the Commission revoke the CUP pursuant to Town Code section 29.20.315(a)(3). The recommendation was based on the following points:

a. The Bar has repeatedly permitted the sale of illegal controlled substances (drugs).

b. The Bar has repeatedly sold or stocked for sale contaminated alcoholic beverages.

c. The operation of the Bar has led to an inordinate and outrageous number of calls for service.

d. The Bar has been operated as a disorderly house and has had its license to sell alcoholic beverages revoked or suspended by the State Department of Alcoholic Beverage Control, with a 30-day suspension served in January/February of 2006.

e. The Bar, by its operation, has attracted a substantial number of transients who have loitered behind the premises in an area adjacent to the public parking lot, creating an aura of a threat to personal safety, creating unsightly blight and litter, resulting in public urination and public exposure, and creating conditions requiring cleanup by Town crews at public expense.

7. The Planning Commission finds pursuant to Town Code section 29.20.315(a)(3) that the Bar has so exercised its CUP as to be detrimental to the public health and safety, and has constituted a nuisance, based on the following facts and supporting evidence:



a. Five (5) separate drug sales at the Bar were witnessed by undercover narcotic agents between August 2003 and June 2004.. One of the sales involved an employee of the Bar.

Evidence: Memorandum dated May 31, 2006, from Scott R. Seaman, Chief of Police, to Bud Lortz, Community Development Director (Exhibit C to staff report dated June 8, 2006); Stipulated facts by Cynthia Goguen, owner of the Bar, Findings of Fact supporting the Decision dated December 1, 2005, of Administrative Law Judge Stewart A Judson, regarding the Bar's license issued by the State Department of Alcoholic Beverage Control ("ABC") (attachment to Exhibit C to staff report dated June 8, 2006).

b. Since November 1999 to May 18, 2006, there have been 1,218 calls for police service at the Bar. 189 of those are considered by the Police Department to be serious calls for service requiring, at a minimum, response by two officers. These include, but are not limited to, robbery, assault with a deadly weapon, active fights, domestic violence, drunk in public and narcotic sales. The majority of these types of calls occur after 10:00 P.M. For example, eight (8) out of 17 calls concerning battery occurred after midnight, all six calls concerning assault with a deadly weapon occurred after 10:45 P.M., 20 out of 30 calls concerning verbal arguments occurred after 11 P.M., and 14 of 15 calls concerning physical fights occurred after 11:45 P.M.

While the total number of calls for Bar is exceeded by the number of calls associated with at least one other bar in or about the Central Business District ("CBD"), that bar, known as Mountain Charley's; is significantly larger than the Bar. In other words, the number of calls for service at the Bar, particularly serious calls for service, are

excessive and out of proportion for a business of its size. In addition, the trend of serious calls for service at the Bar have stayed the same or increased from year to year while those for other establishments serving alcohol have decreased over the same period.

Evidence: Memorandum dated May 31, 2006, from Scott R. Seaman, Chief of Police, to Bud Lortz, Community Development Director (Exhibit C to staff report dated June 8, 2006); Memorandum dated June 27, 2006, from Captain Alana Forrest to Randal Tsuda, Assistant Community Development Director (Exhibit R to the desk item dated June 28, 2006); June 14, 2006 testimony of Captain Alana Forrest to the Planning Commission; June 28, 2006 testimony of Scott R. Seaman, Chief of Police, to the Planning Commission.

c. Numerous inspection reports from the Santa Clara County Public Health Department document problems at the Bar, including seven (7) occasions beginning on December 10, 2002 and ending on March 1, 2006, when bottles of liquor were found to be contaminated with insects or other foreign materials, low alcohol levels were detected, violations were discovered of rules associated with food protection and storage, water and waste handling, bathroom maintenance and utensils and equipment handling. Two (2) other reports concern overdue account balances and an overdue environmental permit. On at least two occasions, the Bar owner personally observed and permitted dice games to be played for money in violation of Penal Code section 330(a).

Evidence: Memorandum dated May 31, 2006, from Scott R. Seaman, Chief of Police, to Bud Lortz, Community Development Director (Exhibit C to staff report dated June 8, 2006); Stipulated facts by Cynthia Goguen, owner of the Bar, Findings of Fact supporting the Decision dated December 1, 2005, of Administrative Law Judge

Stewart A Judson, regarding the Bar's license issued by the ABC (attachment to Exhibit C to staff report dated June 8, 2006).

d. On December 1, 2005, the ABC determined that cause for disciplinary action exists under Article XX, section 22 of the California State Constitution, Business and Professions Code section 24200.5, subsection (a) and Business and Professions Code section 24200, subsections (a) and (b). The ABC ordered the Bar license to be revoked, stayed the revocation for a period of three (3) years, and ordered that the license be suspended for a total of 30 days.

Evidence: Memorandum dated May 31, 2006, from Scott R. Seaman, Chief of Police, to Bud Lortz, Community Development Director (Exhibit C to staff report dated June 8, 2006); Decision dated December 1, 2005, of Administrative Law Judge Stewart A Judson, regarding the Bar's license issued by the ABC (attachment to Exhibit C to staff report dated June 8, 2006).

e. The Bar is incompetently managed, in that the Bar lacks experienced full time management, the Bar owner is inexperienced in operating a bar and is employed elsewhere in a different capacity, and key personal are hired without background checks and are not provided adequate training.

Evidence: Decision dated December 1, 2005, of Administrative Law Judge Stewart A Judson, regarding the Bar's license issued by the ABC (attachment to Exhibit C to staff report dated June 8, 2006).

f. The Bar did not fully and appropriately cooperated with the Police Department. The Bar's owner questioned routine police bar checks, made baseless complaints against police officers and police sergeants and complained about police cars

in the Bar parking lot. While there was no evidence of a formal warning to the Bar issued by the Police Department, there is evidence of numerous contacts between the Police Department regarding inappropriate and illegal activities at the Bar.

Evidence: Memorandum dated May 31, 2006, from Scott R. Seaman, Chief of Police, to Bud Lortz, Community Development Director (Exhibit C to staff report dated June 8, 2006); June 14, 2006 testimony of Captain Alana Forrest to the Planning Commission; June 28, 2006 testimony of Scott R. Seaman, Chief of Police, to the Planning Commission.

g. Noise resulting from late night operations of the Bar, including dumping trash and bottles after midnight, disturbed nearby residents.

Evidence: June 14, 2006 testimony of Mark Forsythe to the Planning Commission; June 14, 2006 testimony of Kevin Shams-Shirazi to the Planning Commission.

h. The operations of the Bar have contributed to a problem of transients congregating in the area behind the Bar and adjacent businesses by allowing some transients to store property in the bar and by allowing some transients to perform odd jobs for the Bar.

Evidence: June 14, 2006 testimony of Captain Alan Forrest to the Planning Commission; June 28, 2006 testimony of Scott R. Seaman, Chief of Police, to the Planning Commission.

i. Pursuant to Town Code section 29.20.190, modification of the conditions of approval of the Bar is essential or desirable to the public convenience or welfare in that the amended conditions are intended to address the problems in the operations of the

Bar which resulted in the forgoing action against the existing CUP; the modifications of the conditions of approval of the Bar will not impair the integrity and character of the zone but, instead, address the negative aspects of the Bar's operations; the modifications of the conditions of approval of the Bar will not be detrimental to public health, safety or general welfare but, instead, address the negative aspects of the Bar's operations; and the modifications of the conditions of approval of the Bar are in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code; to wit, they address the negative aspects of the Bar's operations.

j. Pursuant to Section IV.B of the Redevelopment Plan for the Central Los Gatos Redevelopment Project, the modifications of the conditions of approval of the Bar meet the use set forth in the Town's General Plan, in that the Bar will continue to operate as a permitted commercial use in the C-1 Neighborhood Commercial Zone.

**RESOLVED:**

A. Conditions of approval attached hereto and incorporated herein by this reference as Exhibit "A" are hereby adopted as the Amended Conditions of Approval of this permit.

B. Pursuant to Town Code section 29.20.275, any person may appeal the decision of the Planning Commission to the Town Council by filing a written appeal with the Clerk Department not more than ten (10) days following the adoption of this Resolution and paying the required filling fee.

**PASSED AND ADOPTED** at a regular meeting of the Town Planning Commission of the Town of Los Gatos, California held on 12<sup>th</sup> day of July 2006 by the following vote.

COMMISSION MEMBERS:

AYE: BOURGEOIS, KANE, MICCICHE, O'DONNELL, QUINTANA

NAYS: TALESFORE

ABSENT: RICE

ABSTAIN:

SIGNED: /s/ Philip Micciche  
CHAIRMAN OF THE PLANNING  
COMMISSION,  
LOS GATOS, CALIFORNIA

ATTEST

/s/ Bud N. Lortz  
DIRECTOR OF THE COMMUNITY DEVELOPMENT DEPARTMENT,  
LOS GATOS, CALIFORNIA

## **CONDITIONS OF APPROVAL**

(Updated with Planning Commission Changes)

**408 N. Santa Cruz Ave.**

**Conditional Use Permit U-94-44**

**Consider the revocation of Conditional Use Permit U-94-44 (Goguen's Last Call) for the operation of a bar on property zoned C-2. APN 529-07-046**

**PROPERTY OWNER: Los Gatos Shopping Center, LLC**

**BUSINESS OWNER: Cynthia Goguen**

**TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT AND THE CHIEF OF POLICE:**

1. **PREVIOUS CONDITIONS:** These conditions of approval shall supercede all previously adopted conditions.
2. **IMPLEMENTATION OF CONDITIONS:** Unless otherwise stated herein, the business owner shall implement and maintain compliance with all conditions of approval within 30 days of final action on this Conditional Use Permit. The applicant shall submit a written document to the Director of Community Development indicating how compliance with each condition has been implemented.
3. **NUMBER OF SEATS:** The number of seats shall not exceed 45.
4. **ALCOHOLIC BEVERAGES:** The on-site service of alcoholic beverages is permitted.
5. **HEALTH DEPARTMENT INSPECTIONS:** Arrange to have the Santa Clara County Environmental Health Department inspect the bar for contaminated alcohol and other code violations on a monthly basis at the bar's expense. Provide documentation of this arrangement to the Town. With approval of Health Department, the business owner may utilize the services of Al Sweedler to perform contamination inspections every other month (alternating with Health Department) and shall submit the inspection logs to the Police Department quarterly.
6. **SECURITY LIGHTING:** Install security lighting along the back of the bar.
7. **HOURS OF OPERATION:** The approved hours of operation are Sunday through Thursday from 6:00 A.M. to 11:00 P.M.; and Friday and Saturday from 6:00 A.M. to 12:00 midnight.
8. **SECURITY OPERATIONS:** The business owner shall submit a security plan for approval of the Chief of Police. The plan shall include items such as the name of the security firm, hours when security personnel are present, areas to be secured, problems to be abated, and the number of security personnel.
9. **NEIGHBORHOOD MEETING:** The business owner shall hold a neighborhood a minimum of two times per year to address impacts including noise, intoxication, urination, littering, attraction of transients, and safety. The business owner shall send notification of the neighborhood meeting to all property owners and occupants within 300 feet of the subject parcel. Notification shall also be sent to the Director of Community Development and Chief of Police. Town staff will attend the meetings.
10. **MAINTENANCE OF REAR AREAS:** The business owner shall implement a one-time clean-up of the Northside Parking Lot as specified in the attachment to the letter from Kent Washburn dated June 23, 2006 (Exhibit Q of the Planning Commission Desk Item dated June 28, 2006).

11. **MONTHLY MEETINGS WITH POLICE:** The business owner and bar managers shall meet with the Police Department at the Police Department monthly to discuss operational issues, resolve complaints, and review compliance with conditions. The Department may designate a contact person for the business owner to deal with at the Department's discretion.
12. **LOITERING:** The business owner shall take measures to eliminate loitering behind the bar by means such as the following: calling the Police Department, asking loiterers to leave, locking all trash receptacles and locking the rear door at all times. The bar shall not hold or store items for any person who is not a customer inside the bar.
13. **SECURE DUMPSTER:** Lock the dumpster to prevent theft of recyclables, rummaging through bottles for left over alcohol, etc. No dumping of trash or bottles between 9:00 p.m. and 8:00 a.m.
14. **BAR MANAGER:** The business owner shall employ professional bar manager(s) whose qualifications and background shall be reviewed and approved by the Chief of Police prior to hire. The Chief of Police shall review the bar manager's knowledge of bar operations, applicable laws and have no criminal convictions related to drugs, alcohol or violent crimes.
15. **TRAINING RECORDS:** Provide a list of all current employees and document training of all employees on safety, alcohol, and service topics.
16. **LAST CHANCE AGREEMENT:** The bar owner shall enter into a "Last Chance Agreement" with the Town where the owner admits past negligent operation and creation of a nuisance, and wherein any proven violation of any condition for a period of three (3) years shall result in immediate revocation of CUP without any right to a hearing or appeal (except with respect to whether or not a violation of a condition has occurred). The agreement shall require that the business owner reimburse the Town for staff time incurred at the Planning Commission meetings and for all attorney costs incurred in the abatement of the nuisance. The reimbursement cost shall not exceed the Town of Los Gatos' current application fee for a Conditional Use Permit.
17. **REIMBURSEMENT FOR FUTURE COSTS:** The business owner shall annually reimburse the Town for all documented staff time and attorney costs incurred to implement the conditions of approval and monitor ongoing compliance with the conditions. The reimbursement cost shall not exceed the Town of Los Gatos' current application fee for a Conditional Use Permit. The business owner shall reimburse the Town within 30 days of delivery of invoice.
18. **FUTURE NUISANCES:** Should future operation of the bar create a nuisance situation, whether any conditions are violated or not, Town shall have the right to undertake a proceeding to revoke the CUP and may use any past evidence of negligent operation or nuisances in the future proceeding (including evidence presented in this revocation proceeding).
19. **ALCOHOL POLICY:** The business owner shall implement the following requirements of the Town's Alcohol Policy:
  - a. This establishment shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
  - b. The licensed operator shall have and shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
  - c. Taxicab telephone numbers shall be posted in a visible location.



## Randal Tsuda - Last Call

---

**From:** "Norm Matteoni"  
**To:**  
**Date:** 08/08/2006 7:09 PM  
**Subject:** Last Call  
**CC:**

---

Diane

I am representing Jim Zanardi in the above appeal by the Last Call.

As I get into this matter, I am struck by the deflections utilized by the bar owner's representatives—the owner is a woman who had the bar thrust upon her with her husband's death and knew nothing of the problems.

This immediately suggests improper oversight and experience in running a good bar. But most importantly, an owner must take responsibility. What happened in the last few years with mounting problems and police calls? Nothing. Well actually, a belligerence to the police, never cooperation. But it is the police who are criticized for not reaching out to her with fix-it solutions. Fix-it solutions require cooperation; the owner must take initiative where there are problems.

A second major problem in the mis-operation of this bar is evidenced by the number of calls for police service. First, there are numerous instances of documented problems. Second, the Los Gatos Police have four officers on duty for night service to protect the entire Town. Calls to the Last Call often require 2-3 officers at one time. This stretches the Town's police service. Third, the hours that this happens are late, post 10 pm, and to closing, when patrons have more time to drink. The Planning Commission sought to minimize these problems by cutting back on the hours.

It is my understanding that the hours restriction (the argument is that the "Last Call" cannot function without the ability to pour the last round of drinks) is the key basis for the appeal.

I do understand that the appeal is a hearing de novo and this reopens the issue of revocation.

It is not difficult to find that this bar far exceeds any other Los Gatos Bar in police problems and lack of community responsibility.

Thank you,

Norm Matteoni

Matteoni  
& O'Laughlin  
& Hechtman  
LAWYERS

**NORMAN MATTEONI**

848 The Alameda  
San Jose, California 95126  
T: (408) 293-4300  
F: (408) 293-4004

*CONFIDENTIALITY NOTICE: This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential attorney-client privileged information and attorney work product. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information*

**Attachment 7**

*attached to this transmission is STRICTLY PROHIBITED. Please contact us immediately by return e-mail or at (408) 293-4300, and destroy the original transmission and its attachments without reading or saving in any matter.*

RECEIVED

AUG 10 2006

Norman E. Matteoni  
Peggy M. O'Laughlin  
Bradley M. Matteoni  
Barton G. Hechtman  
Gerry Houlihan

August 8, 2006

TOWN OF LOS GATOS  
PLANNING DIVISION

Mr. Bud N. Lortz, AICP  
Director of Community Development  
Town of Los Gatos  
P.O. Box 949  
Los Gatos, CA 95031

Re: *Last Call Appeal; Hearing Scheduled before Town Council  
August 21, 2006*

Dear Mr. Lortz:

I represent the landlord - Los Gatos Shopping Center, LLC, of the shopping center in which the Last Call is located. I am aware of the appeal by the owner of the Bar:

In a review of the hearings before the Planning Commission, I noted that the attorney for the Bar owner made the argument that the judge's decision in the landlord's unlawful detainer action in December, 2005, supported non-revocation.

I reviewed the Memorandum of Decision and other pleadings in that case, as well as talked to the attorney for Mr. Zanardi. That unlawful detainer action was decided solely on one issue, that is, whether the 30-day suspension by ABC of the liquor license constituted a breach of the lease. The court stated that, under the circumstances of the terms of the suspension and the forfeiture clause in the lease, it did not.

The Town's grounds for revocation and/or modification include the ABC suspension of the Bar's license as only one factor that the Town must consider in this matter. Mr. Zanardi's action was pursuant to the terms of a lease contract.



848 The Alameda  
San Jose, CA 95126  
ph. 408.293.4300  
fax. 408.293.4004  
www.matteoni.com

Attachment 8

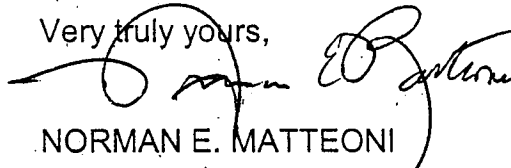
Mr. Bud N. Lortz, AICP

August 8, 2006  
Page 2

Moreover, I submit that the Town's jurisdiction is broader than that of the ABC in this instance; it must consider the operation and conduct of the Bar under the standards of the Town's zoning of Neighborhood Commercial, general nuisance, police calls and other code violations.

Please include this letter with the Staff Report to the Council.

Very truly yours,

A handwritten signature in black ink, appearing to read "Norman E. Matteoni", written over the typed name.

NORMAN E. MATTEONI

NEM:sd

cc: Orry Korb, Town Attorney  
Jim Zanardi



**RECEIVED**

AUG 15 2006

TOWN OF LOS GATOS  
PLANNING DIVISION

August 15, 2006

Norman E. Matteoni

Peggy M. O'Laughlin

Bradley M. Matteoni

Barton G. Hechtman

Gerry Houlihan

Mayor and Members of the Town Council  
Town of Los Gatos  
P.O. Box 949  
Los Gatos, CA 95031

Re: *Appeal of The Last Call; Council Agenda (8/21/2006)*

Dear Honorable Mayor and Members of the Council:

I represent the Shopping Center owner, Jim Zanardi, where The Last Call is located.

Although Mr. Zanardi did not initiate this appeal, he does understand that the appeal is *de novo*. He asks the Council to revoke the use permit based on the evidence in the record and to be presented at the Council hearing. In the alternative, the Bar Owner's appeal of the restrictions imposed by the Planning Commission should be denied.

#### **CONDITIONS OF MODIFICATION**

In regard to the Planning Commission's decision, the hours of operation are particularly crucial. A review of the Police Department record of calls indicates that physical assaults, noise complaints and other illegal activities mostly take place during the later hours. The Commission recommended an 11:00 p.m. closing Sunday through Thursday and a 12:00 midnight closing Friday and Saturday nights. I am informed by Town Staff that this is the primary, and may be the only, condition being appealed. Given the hours during which most offenses occur, this is a condition that the bar should embrace to prove it is capable of proper operation and sensitive to its neighbors.

Equally important is Condition No. 8 - security operations, imposed by the Commission. The Police Department has spent great amounts of time responding to calls from this bar. The purpose of the security condition is to



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Mayor and Members of the Town Council

August 15, 2006

Page 2

have the owner bear some of this responsibility by hiring approved security personnel trained to avoid problems; This condition, if it stays in place, should be tightened to clearly require retention of security personnel as approved by the police; and there should be an ongoing program for that security personnel to work with your police.

Obviously, the owner whose business benefits from this additional security should be required to reimburse the Town for costs of implementing the conditions of modification and monitoring the ongoing compliance with the conditions. Because the bar owner did not show the ability to hire professional bar managers with appropriate qualifications and background, the Commission had no choice but to place this burden of review and approval of bar managers on the Chief of Police.

The conditions, although intended to minimize police response, actually have the Police Department more involved in the operation of The Last Call.

### **REVOCATION**

When you consider the conditions from this perspective, the real solution is to revoke the use permit. The problems have been just too great with no real solutions.

The problems have been continual. They have been with the knowledge of the owner. Despite her attorney saying that she was not aware, there are incidents in the police report where she was one of the parties to altercation in 2002 and she initiated a call to 911 in 2004, where there was another customer threatening the life of a customer, as well as the bar owner.

There has been no attempt at good faith on the bar owner's part since the Planning Commission action, by coming to the Town and asking for a meeting with the Police Department to begin implementation of these conditions. Rather the approach has been one of ignoring the conditions and filing the appeal.

At the same time, when you read the transcripts of the hearings before the Commission, there were times when the lawyer for the bar owner indicated restrictions were appropriate and would assist this bar owner to run a better business in the community. The Commission was led to believe the new restrictions were acceptable.

Mayor and Members of the Town Council

August 15, 2006

Page 3

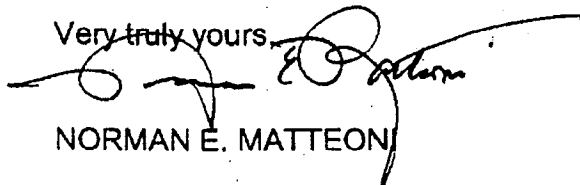
The bar's owner seeks to turn the tables on the Police Department, because the Department did not give this bar owner more warnings of problems. In my client's view, when someone owns a bar in a local community, that person has a responsibility to that community. If there are problems, the owner should seek out the police in attempting to work to solutions before problems escalate. This owner claims to have been ignorant of the problems. If true, that is still no excuse. A business owner is responsible for the operation of the business. But, here the problems were so chronic and blatant, no reasonable owner can claim ignorance.

The lawyer for the bar owner attempts to cast Jim Zanardi as the villain and orchestrating the entire revocation proceedings because he failed to prevail in an unlawful detainer lawsuit against The Last Call. I have long known this Council and prior Councils of the Town as highly independent and not susceptible to doing the bidding of any particular person in Town. Town Staff works for the Town, not an individual business owner. The landlord may be capable of living with the problems of The Last Call, but he does not think it is wise to do so, either for the Shopping Center or the Town.

Thus, he asks the Council to revoke the use permit. The Council needs to very carefully consider the report of the Police Chief and the numerous citations/police reports that have been issued over the last several years, together with the health problems that have been identified, and the drug busts that took place at The Last Call.

Finally, the Council needs to apply the Policy Regulating the Consumption and Service of Alcoholic Beverages. Where there has been a history of abuse, this bar owner cannot excuse itself with having been in business before the policy was adopted. The very fact that a revocation action is contemplated places The Last Call within the policy.

Very truly yours,



NORMAN E. MATTEONI

NEM:sd

cc: Debra Figonè, Town Manager  
Bud Lortz, Director of Community Development  
Jim Zanardi





KENT G. WASHBURN  
ATTORNEY AT LAW

VOICE: (831) 458-9777  
FAX: (831) 459-6127

kentgwashburn@compuserve.com

123 Jewell Street  
SANTA CRUZ, CALIFORNIA. 95060

August 16, 2006

Mayor Diane McNutt  
Town of Los Gatos  
Los Gatos, Ca. 95030

RECEIVED

AUG 16 2006

Re: Goguen's Last Call/August 21, 2006 agenda

MAYOR & TOWN COUNCIL

Respected Mayor and Council Members:

I am very reluctant to introduce myself to you and the Town Council (actually I had a passing acquaintance with Council member Spector in law school years ago) in this way, but I must strongly and categorically protest a denial of due process and equal protection of the law that is being foisted on my client Goguen's Last Call by Town staff.

Notice

When a government body seeks to take away substantial, vested rights such as a valid conditional use permit, the holder of the permit has a constitutional right to notice of any public hearing affecting the rights under that permit. The notice must be sufficiently in advance to enable the permit holder to respond to the showing that its opposition - in this case the Town's own staff - seeks to make against her.

Your staff has essentially failed to meet this requirement of the law. The appeal of the Planning Commission's decision was filed on July 24, 2006 with the express request from Cynthia Goguen, the appellant, to Jackie Rose, the staff member who accepted the appeal form and checks, that the hearing be set as late in the 56 day period as possible because of our need to access and respond to the police report evidence that will be the meat of the case against my client. I confirmed this with Ms. Rose by telephone on Monday, August 14, 2006. She replied to Ms. Goguen that she did not set the hearing dates herself and the Planning Department or the Town Clerk would notify us when they did.

Staff failed to do so. Instead the only notice we were given was a pro forma, mass mailing that arrived at the Last Call with the normal load of junk mail on Wednesday, August 9 and was almost discarded with the rest before a vigilant employee noticed what it was and called it to Ms. Goguen's attention. I enclose a copy for your file.

This is a breach of the Town's fundamental constitutional duty to give its citizens who have substantial vested rights sufficient advance notice in order to prepare an adequate defense against the assembled might of government. The failure to do so is a denial of those rights, especially where staff declined to give my client the appeal date when she filed and promised she would be notified. Any argument by staff that the mass mailing card was sufficient is transparently unfair and is equivalent to suggesting that the person whose substantial vested rights are at stake is entitled to no more notice than the average disinterested citizen who gets such a mailer.

## Content

The second category of due process failure by Town staff has to do with the content of what has – or more precisely has not – been furnished to my client. Let me specify two examples of it.

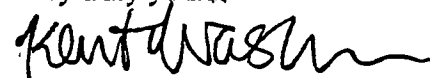
The first concern is as to the content of the staff materials that will be presented to you in advance of the public hearing. I am informed by Ms. Rose that those materials will be copied and distributed to you on Thursday evening and used by the Council to prepare for the hearing. In effect the materials staff submits to your agenda packet will constitute an accusation against my client.

As of this writing *none* of those materials have been offered or made available to my client. We face the deadline for presenting you with our reply to the accusations in a partial vacuum because we do not know just what our accusers will be saying to you in these written materials. By staff's failure to make such materials available to us in advance so that we may use them in crafting our reply, we are being placed at an unfair disadvantage. It is a daunting enough task to oppose an entire Town government without being placed at the further disadvantage of the Town staff putting its views and supporting materials in the packet in advance to educate the Council in advance while the same are being withheld from us. If this were some neighborhood group challenging my client it would be entirely different. Because it is the very government body that proposes to take away my client's substantial vested rights that is making the accusation, due process requires that we be given access to the supporting material staff proposes to present in your agenda packet far enough in advance to be able to prepare a reply for inclusion there. The denial of that opportunity gives staff an unfair advantage in shaping the Council's thinking before the hearing ever begins.

I attempted to sort this issue out with staff beginning last Thursday when I first learned of the hearing date. I got back what I would term a vague and uncooperative reply from the outside "municipal law specialist" who has been hired at taxpayer expense to advise staff. In essence he told us that in this hearing de novo the staff may choose to present anything or nothing that was presented to the Planning Commission, may bring forward new materials or arguments, and the only items we would be given in advance was a sheaf of redacted police reports hand-selected by the police.

We have repeatedly demanded in writing, and hereby demand again, full access to all the police reports on the question of whether or not Goguen's is being treated fairly and equally by your staff, in particular the police department, as it treats other, similarly-situated establishments. It is part of my client's defense to the charges before you that as a female bar owner she is not being afforded equal treatment of the law. She cannot counter the police chief's testimony on this point, where he alleges that the police reports show her bar is so much worse than any other and she is being treated equally with others. If we are denied access to a) **all the police reports** for the Last Call and b) **all the police reports** for the same period for other establishments in Los Gatos which we claim are receiving better treatment. Refusal amounts to a denial of not only due process, but also equal protection of the laws. We therefore demand postponement of the hearing until at least September 5 and copies of all reports sufficiently in advance of any continued hearing date to allow us to present a meaningful defense.

Very truly yours,



Town Council  
110 E Main Street  
PO Box 949  
Los Gatos, CA 95031

## PUBLIC HEARING NOTICE



ATTENTION

OCCUPANT

408 N SANTA CRUZ AVE  
LOS GATOS CA 95030 5321

55030#5321





**KENT G. WASHBURN**  
**ATTORNEY AT LAW**

VOICE: (831) 458-9777  
FAX: (831) 459-6127

kentgwashburn@compuserve.com

123 Jewell Street  
SANTA CRUZ, CALIFORNIA. 95060

August 17, 2006

**RECEIVED**

AUG 17 2006

TOWN OF LOS GATOS  
PLANNING DIVISION

Mr. Randy Tsuda  
Assistant Planning Director  
Town of Los Gatos  
110 E. Main St.  
Los Gatos, Ca. 95030

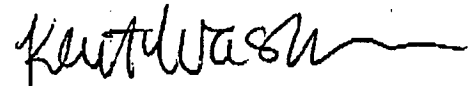
Re: due process issues/for inclusion with Town Council package fax only, 12 noon

Dear Mr. Tsuda:

The purpose of this letter is to confirm our telephone conversation of this morning at about 10:10 a.m. and the follow up fax you sent. Please include this with the Council's materials.

1. **Planning Commission materials** – You assured me that everything submitted to the Planning Commission by my client at each and any stage of the process will be automatically included in the packet each Council member receives. Thank you. That saves a lot of unnecessary copying.
2. **Staff report** – I have been assured by you and other staff that I will receive it and all accompanying materials by e-mail as soon as it is available. I have heard various estimates of this happening this afternoon, this evening, or tomorrow morning. This handicaps me from making an effective rebuttal in behalf of my client. It strongly suggests that if the staff cannot prepare its own presentation in time for us to have a chance to digest it, this matter is being rushed forward too fast for my client to have a reasonable opportunity to respond.
3. **Mailed notice** – In a letter to the mayor yesterday I charged that my client had not been given adequate advance notice of the hearing. Had the bulk mailing been our only notice I would stand by that charge. You have helpfully faxed me this morning the Town's proof of service, a copy of what was sent, and the return receipt. Mystery solved. My client does recall getting this document in the mail, and thought it was just a receipt for her appeal. She failed to notice the hearing date had been filled in at the bottom, and therefore didn't calendar it or tell me. I am satisfied that this mailed notice was adequate and I apologize for being ignorant of what had really happened. We continue to stand by the rest of our due process and equal protection contentions that the hearing is being held too quickly for us to obtain the necessary documents and respond in order to prove that my client is being treated unfairly and unequally.

Very truly yours,



Kent G. Washburn

Attachment 11